IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.441 OF 2005
IN
APPEAL FROM ORDER NO.417 OF 2005

Afroze A. Shaikh ..Appellant.
V/s
The Municipal Corporation of Greater Bombay. ..Respondent

Mr.P.M.Pradhan with Mr.Ajit Karwande for the Appellant.

Mr. M. V.Walavalkar with Miss Geeta Joglekar for the Respondent.

CORAM: A.S.OKA,J.
DATE : 05.05.2005.

P.C.:

1. Rule. Respondent waives service. The challenge in the suit filed by the Appellant-plaintif is to the action under Section 351 of The Bombay Municipal Corporation Act, 1888. The Notion of Motion for injunction filed by the Appellant is dismissed by the Trial Court.

2. By order dated 14th April 2005 I appointed Shri. Subodh Tari, architect on the panel of the Court Receiver of this Court to visit the suit property and to submit a report. Accordingly a report dated 28th April 2005 has been submitted. The report discloses that the godown Nos.8 and 9 which are claimed by the Appellant are part of the building line of Anees Chambers and are shown on City Survey Plan corrected upto year 1956. It is stated that in the corrected plan of the year 1956

the space between godown Nos.8 and 9 in Anees Chambers and the plot boundary of the Anis Chambers is shown open. However, in the City Survey Plan corrected up to the year 1966 there are stalls shown in the said open space.

3. As per the policy of the Respondent-Corporation commercial structures constructed unauthorisedly prior to 1st April 1962 are required to be tolerated. Primafacie, the stalls in the open space are constructed between the years 1956 and 1966. In view of what is stated by the Commissioner in his report, case for grant of interim relief is made out.

4. Hence, Civil Application is dispossed of by directing that till the final disposal of the appeal both the parties will maintain the status-quo as of today in respect of the structures in dispute. It will be open for the Respondent-Corporation to file objections to the report of the Commissioner within a period of eight weeks from today.

JUDGE